

IN THE MATTER OF : BEFORE THE

BRIAN LEO KEENEN & : HOWARD COUNTY
JENNIFER ANNE POIRER :

Petitioner : BOARD OF APPEALS

: HEARING EXAMINER

: BA Case No. 12-005V

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DECISION AND ORDER

On May 7, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Brian Leo Keenen & Jennifer Anne Poirer (Petitioners) for a variance to reduce the 75-foot setback from a collector or arterial public street right-of-way (ROW) to 59.7 feet in an RC-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioners. Robert Vogel testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, the Hearing Examiner finds as follows:

1. Property Identification. The subject property is located on the south side of Wye River Drive about 125 feet west of Ten Oaks Road. It is officially identified as Tax Map 22, Grid

19, Parcel 90, Lot 41 and is also known as 13703 Wye River Drive (the Property).

2. Property Description. The 1.34-acre irregularly shaped, pipestem Property has eleven property lines. According to the variance plan, the proposed dwelling would be sited in the middle portion of the main Property area. To its rear and south is a large septic easement, and to the easement's east, the well envelope. The proposed dwelling front faces north. An attached garage on the dwelling's western side will be accessed from a pipestem access driveway sited close to the western driveway.

The Castleberry at Ten Oaks subdivision landscaping and forest conservation plan attached to the petition depicts a landscape buffer along the eastern property line running along Ten Oaks Road.

3. Vicinal Properties. All vicinal properties are also zoned RC-DEO. The properties to the north and west are also lots within the subdivision. To the east, across Ten Oaks Road are residential lots fronting on this road. The southern property is unimproved.

4. Variance Request. The Petitioner is seeking a variance from Zoning Regulations Section 105.E.4.b.(1) to reduce the required 75-foot structure setback from an arterial or collector public street right-of-way (ROW) to 59.7 feet.

5. In further support of the requested variance, Mr. Vogel testified that the size and location of the septic easement, which is located within the buildable area, further limits the siting of a dwelling.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a.(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation: Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's irregular shape causes practical difficulty in complying with the setback requirement, in accordance with Section 130.B.2.a.(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

Even with the reduced setback, the addition would not alter the essential character of the neighborhood or district in which the lots are located because all dwellings in the subdivision have side garages, so the dwelling's siting will be in character. Additionally, the landscaping along Ten Oaks Road will buffer the view of the dwelling from neighboring residences. The variance therefore will not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a.(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulty in complying strictly with the setback regulation arises from the Property's unique shape and was not created by the Petitioner, in accordance with Section 130.B.2.a.(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The proposed reduction is intended to accommodate a reasonably sized dwelling type used elsewhere in the subdivision. Within the intent and purpose of the regulations, then, the variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a.(4).

ORDER

Based upon the foregoing, it is this **14th Day of May 2012** by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the variance petition of Brian Leo Keenen & Jennifer Anne Poirer for a variance to reduce the 75-foot setback from a collector or arterial public street right-of-way (ROW) to 59.7 feet in an RC-DEO (Rural Residential: Density Exchange Option) Zoning District, is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and as testified to, and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.